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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

16 MEGAN SCHMITT, DEANA
17 REILLY, CAROL ORLOWSKY, and
STEPHANIE MILLER BRUN,
18 individually and on behalf of
19 themselves and all others similarly
situated,

20 Plaintiffs,

21 v.

22 YOUNIQUE, LLC

23 Defendant.

Case No. 8:17-cv-01397-JVS-JDE

**DEFENDANT YOUNIQUE, LLC'S
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

*[Filed Concurrently with Notice of
Motion and Motion for Summary
Judgment; Declaration of Sascha Henry
in Support Thereof; and Separate
Statement]*

Hearing Date: October 22, 2018
Hearing Time: 1:30 p.m.

The Hon. James V. Selna
Santa Ana, Courtroom 10C

SAC filed: January 4, 2018
Trial Date: February 19, 2019

28 **[PUBLIC REDACTED VERSION]**

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1 **I. INTRODUCTION**

2 This lawsuit arises from an allegation that defendant Younique, LLC, falsely
3 listed on the label of one of its cosmetic products that it contained natural green tea
4 fibers. (SAC, Dkt. 58, ¶¶ 2, 8, 22, 32, 36, 40 and 44.) Though the operative
5 complaint alleged that the four plaintiffs, Deana Reilly, Carol Orlowsky, Megan
6 Schmitt and Stephanie Miller Brun, had relied on the label, they admitted facts
7 during their depositions that show [REDACTED]

8 [REDACTED] These admissions were not surprising because Younique products are
9 only sold online, through independent contractors (called “Presenters”), and not at
10 stores. (*See* Henry Decl., Ex. D Brun Tr., 72:14-16.)¹ Presenters purchase a
11 “presenter kit”, use the products in the kit (and purchase additional products as they
12 use these up), and then post about them across social media platforms such as
13 Facebook and Instagram. Presenters drive sales by showing how they use and love
14 the products. Presenters receive commissions and royalties based on the volume of
15 sales achieved.

16 The named Plaintiffs have testified to the circumstances and reasons for
17 buying the product at issue, each of which demonstrate that they do not have
18 standing to complain about being misled by the label, but also that the label did not
19 cause them harm. In addition, Plaintiffs lack evidence of damages to support their
20 claims. Though in discovery they promised to provide information about damages
21 as part of their expert disclosures rather than produce responsive documents, their
22 expert [REDACTED].

23 Younique moves for summary judgment as to each Plaintiff on the grounds
24 that they lack evidence of standing, causation and damages. In addition, as set forth
25 below, Plaintiff Orlowsky lacks standing to pursue a claim under Tennessee law as
26 [REDACTED]

27 ¹ All Exhibits referenced herein are attached to the Declaration of Sascha Henry,
28 filed concurrently herewith.

1 [REDACTED], which is fatal under
2 Tennessee law. Plaintiff Brun, as a consumer, lacks standing to bring a claim under
3 Ohio's Deceptive Trade Practices Act, which is limited to other businesses. Her
4 Ohio Consumer Sales Practices Act claim is time-barred.

5 **II. GENERAL BACKGROUND**

6 The Moodstruck 3D Fiber Lashes product at issue (the "Lash Enhancer") was
7 sold until July 2015. (Dkt. 58, ¶ 8.) The Lash Enhancer enhanced the look of
8 eyelashes and consisted of two tubes. (Ex. T (authenticated at Ex. B, 169:25-170:5.)
9 One tube contained the transplanting gel and the second contained loose fibers. (See
10 Ex. G (authenticated at Ex. D, 111:5-10).) To use the Lash Enhancer, the consumer
11 first applied the transplanting gel to the eyelashes using a wand, similar to how a
12 mascara is applied. Then, the consumer applied the fibers, again using a wand. The
13 fibers adhered to the gel, enhancing the appearance of the consumer's eyelashes.
14 The transplanting gel was then reapplied to seal in the fibers. In the image below,
15 which was an image used to market the Lash Enhancer, the left eye had the Lash
16 Enhancer applied and the right eye did not.



23 (YNQE0000266.)

24 The two tubes were packaged inside a hard, black case (akin to an eyeglass
25 case). (See Ex. S (authenticated at Ex. B, 168:13-19).) The front of the case
26 showed only the Yunique logo, and had no images on the back. Inside of the case
27 was a glossy insert. (See Ex. H (authenticated at Ex. D, 120:6-11); Dkt. 58, SAC, ¶
28

1 8 (first image).) The case was shrink-wrapped in plastic. (*See* Ex. H.)

2 The ingredients were listed on a label stuck to the shrink-wrap plastic on the
3 back of the case. (Ex. H; SAC, ¶ 8 (second image); *see also* Ex. I for relative size
4 (Ex. I authenticated at Ex. D, 123:22-124:1).) The ingredients for the gel described
5 some synthetic ingredients, and the ingredients for the fibers were described as
6 containing “natural” “green tea” fibers. (Dkt. 58, ¶ 8 (images).) Plaintiffs allege
7 that the fibers did not contain natural green tea fibers but rather were ground up
8 nylon.² (*Id.*, ¶ 10.)

9 **III. CLAIMS ALLEGED BY PLAINTIFFS**

10 Plaintiffs allege claims based on the alleged false labeling of the Lash
11 Enhancer. (*Id.*, ¶ 2 (“Younique represented on its packaging that the [Lash
12 Enhancer] was natural and contained green tea fibers, when in reality the fibers were
13 just ground-up nylon.”); ¶ 8 (showing image of Lash Enhancer insert and image of
14 back of the label); ¶ 22 (referring to representations on label); ¶ 32 (Schmitt); ¶ 36
15 (Reilly); ¶ 40 (Brun); ¶ 44 (Orlowsky).)

16 Plaintiff Reilly, a Florida resident, alleges a claim under Florida’s Deceptive
17 and Unfair Trade Practices Act, Fla. Stat. § 501.201 (“FDUTPA”). (Dkt. 58, Claim
18 6.)

19 Plaintiff Orlowsky, [REDACTED], alleges claims under
20 the Tennessee Consumer Protection Act (“TCPA”), for breaches of express and
21 implied warranty, and for violation of the Magnuson-Moss Warranty Act
22 (“MMWA”). (Dkt. 58, Claims 11-13 and 1, respectively.) [REDACTED]
23 [REDACTED]

24 Plaintiff Schmitt, a California resident, alleges claims under California’s
25 Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (the “UCL”),
26

27 ² [REDACTED]
28 [REDACTED] (Brun Tr., 31:2-15; 173:9-174:4; Orlowsky Tr., 153:12-154:9; Schmitt
Tr., 67:5-71:2; 73:2-8; Reilly Tr., 121:12-122:6; 148:7-23.)

1 under subdivisions (a)(5), (a)(7) and (a)(9) of California’s Consumer Legal
2 Remedies Act, Cal. Civ. Code § 1750 et seq. (the “CLRA”), for breaches of express
3 and implied warranty, and for violation of the MMWA. (Dkt. 58, Claims 2-5 and 1,
4 respectively.)

5 Plaintiff Brun, an Ohio resident, alleges claims under Ohio’s Consumer Sales
6 Practices Act, Ohio Rev. Code § 1345.01, Ohio’s Deceptive Trade Practices Act,
7 Ohio Rev. Code § 4165.01, for breaches of express and implied warranty, and for
8 violation of the MMWA. (Dkt. 58 Claims 7-9 and 1, respectively.)

9 **IV. PLAINTIFFS’ EXPERIENCES WITH THE LASH ENHANCER**

10 **A. Plaintiff Reilly Bought the Lash Enhancer to Support Her Cousin,**
11 **a Presenter, and Because it was the “Hot Product” of the Season**

12 [REDACTED]
13 [REDACTED]
14 [REDACTED] (Ex. A (“Reilly Tr.”) 43:24-44:10.) [REDACTED]
15 [REDACTED]
16 [REDACTED] (*Id.*, 34:8-15.)
17 [REDACTED]
18 [REDACTED]. (*Id.*, 28:24-29:6; 30:5-32:7.) [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] (*Id.*, 64:12-65:3.) [REDACTED]
22 [REDACTED] (*Id.*, 33:23-34:7; 92:1-
23 12; Ex. DD.)
24 [REDACTED]
25 (Reilly Tr., 107:8-108:23.) [REDACTED]
26 [REDACTED] (*Id.*) [REDACTED]
27 [REDACTED] (*Id.*, 67:6-68:3.) [REDACTED]
28 [REDACTED] (Ex. S; Reilly Tr., 110:19-24; 116:3-20.)

1 [REDACTED]

2 [REDACTED] (Reilly Tr., 153:19-154:15.)

3 [REDACTED]

4 [REDACTED] *Id.*, 27:15-29:1; 58:22-25.) [REDACTED]

5 [REDACTED]. (*Id.*, 60:21-62:3.)

6 [REDACTED]

7 [REDACTED]

8 (*Id.*, 64:6-11.)

9 [REDACTED]

10 (*Id.*, 134:21-135:9.)

11 She produced a receipt showing her purchase. (*Id.*, 38:11-21; Ex. E,
12 PL00001.)

13 **B. Plaintiff Orlowsky Wanted to Earn Money From Home, Became a**
14 **Presenter and Used The Lash Enhancer To Sell It**

15 [REDACTED]

16 [REDACTED]. (Ex. B (“Orlowsky Tr.”) 92:18-93:5.) [REDACTED]

17 [REDACTED] (*Id.*, 131:9-25.) [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] (*Id.*, 131:9-25.) [REDACTED]

21 (*Id.*, 79:16-80:4.) [REDACTED]

22 [REDACTED]. (*Id.*, 195:3-7.)

23 [REDACTED]

24 [REDACTED] (Exs. V-Y, BB, CC; Orlowsky Tr., 90:4-91:24; 94:8-100:18; 120:23-
25 121:10.) [REDACTED]

26 [REDACTED] (Orlowsky Tr.,
27 192:20-193:10.) [REDACTED]

28 [REDACTED]. (*Id.*, 90:9-

1 92:13.) [REDACTED]
2 [REDACTED].
3 (*Id.*, 193:16-20; *see* <https://www.youtube.com/watch?v=BOvTuxmX0ms>; 194:6-
4 13). [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]. (*Id.*, 195:23-204:10.) [REDACTED]
8 [REDACTED] (*Id.*, 194:1-5.)

9 In her own video (https://www.youtube.com/watch?v=_N_1UedBZpY),
10 Orlowsky demonstrates how to apply the Lash Enhancer on herself, again showing a
11 comparison of one eye with the Lash Enhancer and one without. (Orlowsky Tr.,
12 216:15-220:1.) She never mentions natural green tea fibers or displays the Lash
13 Enhancer label. (*Id.*)

14 [REDACTED]
15 [REDACTED]
16 [REDACTED] (*Id.*, 111:16-113:10.) [REDACTED]
17 [REDACTED]
18 [REDACTED] (Exs. V-Y, BB, CC; Orlowsky Tr., 95:21-
19 98:10; 100:4-18; 110:15-113:10.) [REDACTED]
20 [REDACTED]
21 [REDACTED] (*Id.*, 103:2-3; 108:18-110:15; Ex. Z, AA.)
22 [REDACTED]
23 [REDACTED] (Orlowsky Tr., 31:3-32:7.) [REDACTED]
24 [REDACTED] (*Id.*) [REDACTED]
25 [REDACTED]
26 [REDACTED] (*Id.*, 81:18-20.)

27 [REDACTED]
28 [REDACTED] (*Id.*, 183:8-185:11; 190:3-191:8, Ex. GG (Response Nos. 4, 30, 31); Ex. HH

1 (Response Nos. 42, 43).) Though counsel produced no receipts in response to
2 Younique's document requests and her responses said she had "none," counsel
3 produced four receipts the morning of her deposition. (Exs. U, GG.) [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED] Orłowsky Tr., 30:20-31:11.) [REDACTED]
7 [REDACTED]
8 [REDACTED] (*Id.*)
9 [REDACTED]
10 [REDACTED]. (*Id.*, 122:17-123:11.) [REDACTED]
11 [REDACTED]. (*Id.* 17:2-9.) [REDACTED]. (*Id.*,
12 37:23-38:1.)

13 **C. Plaintiff Schmitt Bought the Lash Enhancer Because Women at a**
14 **Dinner Party Recommended it to Her**

15 [REDACTED]. (Ex. C
16 ("Schmitt Tr.") 32:19-33:13.) [REDACTED]
17 [REDACTED] (*Id.*, 131:3-15.) [REDACTED]
18 [REDACTED]
19 [REDACTED] (*Id.*, 36:5-15; 39:19-40:6.) [REDACTED]
20 [REDACTED] (*Id.*) [REDACTED]
21 [REDACTED]
22 [REDACTED] (*Id.*, 102:18-104:2.)
23 [REDACTED]. (*Id.*, 32:19-
24 33:2.)

25 [REDACTED]
26 [REDACTED] (*Id.*, 41:5-42:6.) [REDACTED]
27 [REDACTED]
28 [REDACTED] (*Id.*, 39:19-25.).

1 [REDACTED]
2 [REDACTED] (Schmitt Tr., 42:24-44:8.) [REDACTED]
3 [REDACTED] (Id.) [REDACTED]
4 [REDACTED] (Id.)
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED].
11 (Id., 47:16-48:1.)
12 [REDACTED]
13 [REDACTED]. (Id., 126:25-127:9.) [REDACTED]
14 [REDACTED] (Id., 52:8-22; 54:2-17.) [REDACTED]
15 [REDACTED] (Id., 52:23-25.) [REDACTED]
16 [REDACTED] (Id., 55:5-8.)
17 [REDACTED]
18 [REDACTED]. (Id.,
19 129:5-130:1.) [REDACTED]
20 [REDACTED] (Id., 131:15-132:1.)
21 **D. Plaintiff Brun Received the Lash Enhancer For Free, Hosted a**
22 **Party and Became a Presenter**
23 [REDACTED]
24 [REDACTED] (Ex. D, “Brun Tr.,” 88:4-15.) [REDACTED]
25 [REDACTED]
26 [REDACTED] (Id., 89:1-92:1.) [REDACTED]
27 [REDACTED] (Id.) [REDACTED]
28 [REDACTED]

1 [REDACTED]. (*Id.* 84:25-85:24; 88:16-20.) [REDACTED]
2 [REDACTED]
3 [REDACTED]. (*Id.*, 94:25-96:3.) [REDACTED]
4 [REDACTED] (*Id.*, 90:6-11; 94:13-24.)
5 [REDACTED]
6 [REDACTED]. (*Id.*, 231:10-235:8; 279:2-280:11; Ex. R.) Brun created
7 a YouTube video in which she demonstrated the Lash Enhancer on herself, but did
8 not talk about the Lash Enhancer as having natural or green tea fibers and did not
9 display the label. (Ex. Q; Brun Tr., 231:16-234:8;
10 <https://www.youtube.com/watch?v=97wKoHB2Svg>.) [REDACTED]
11 [REDACTED]
12 [REDACTED] (Brun Tr., 279:21-280:8.) [REDACTED]
13 [REDACTED] (*Id.*, 280:9-11.) [REDACTED]. (*Id.*
14 162:1-10.)
15 [REDACTED]
16 [REDACTED] (*Id.*, 51:3-12.) In response to Yunique's document requests, counsel
17 produced one receipt showing the purchase of the Lash Enhancer on November 18,
18 2014. (Henry Decl., ¶ 9; Ex. E.) Just before her deposition, her counsel produced
19 eight more receipts. (Exs. F, J-P.) The receipts showed Brun buying five Lash
20 Enhancers at one time, buying the Lash Enhancer as part of a collection of products,
21 and buying the Lash Enhancer purchased with a half price coupon. [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] (*Id.*, 50:7-16 (emphasis added); *see also* 50:17-51:2.)

25 **V. PROCEDURAL HISTORY**

26 Plaintiff Schmitt filed this lawsuit on August 16, 2017. (Dkt. 1.) She
27 amended her complaint and added the remaining plaintiffs on October 16, 2017.
28 (Dkt. 43.) Counsel for the parties filed a joint scheduling conference report on

1 December 4, 2017, appeared for a scheduling conference on December 11, 2017,
2 and the Court entered two scheduling orders. (Dkts. 54, 56, 56-1.) The parties
3 served initial disclosures on January 10, 2018. (Henry Decl., ¶ 3.)

4 Younique propounded document requests on February 14, 2018, to which
5 Plaintiffs responded by producing eight pages of documents and responding that
6 they had no others. (Henry Decl., ¶ 9, Ex. E.) Younique asked for, among other
7 categories, the documents supporting Plaintiffs' contentions that they had paid a
8 premium for the Lash Enhancer, that the Lash Enhancer had less value than
9 represented, and documents supporting their calculation of monetary damages. (Ex.
10 EE, RFP Nos. 9, 16, 17, 20, 21, 23, 24-27.)³ With the exception of No. 23, Plaintiffs
11 responded that these categories called for expert discovery and promised to comply
12 with the Federal Rules of Civil Procedure and case management orders to disclose
13 expert information. (Exs. FF (Reilly), GG (Orlowsky), II (Schmitt), JJ (Brun)
14 (Responses to Nos. 9, 16, 17, 20, 21, 24-27).) In response to No. 23, Plaintiffs
15 objected on privilege grounds, and plaintiff Brun's responses, referred to a total
16 receipt. (Exs. FF (Reilly), GG (Orlowsky), II (Schmitt), JJ (Brun) (Response to
17 Nos. 23).)

18 After conferring with Plaintiffs' counsel as to the types of sales data they
19 needed for the Lash Enhancer, Younique produced sales data and retail pricing in
20 Excel format on April 18, 2018. (Henry Decl., ¶ 43, Ex. MM, p. 2.)

21 Younique noticed Plaintiffs' depositions on April 18, 2018, but Plaintiffs did
22 not appear and did not provide any alternative dates. (Henry Decl., ¶ 4, Dkt. 66, ¶¶
23 6, 7.) Ultimately after meeting and conferring, counsel negotiated a stipulation to
24 allow Plaintiffs' depositions to proceed after the discovery cutoff, allow Plaintiffs to
25 depose Younique's Rule 30(b)(6) witness (though Plaintiffs had not noticed a single
26 deposition), and postpone Plaintiffs' filing of their motion for class certification.

27
28 ³ Younique served identical requests on each Plaintiff. (Henry Decl., ¶ 35.)

(Dkt. 66, ¶¶ 8-10; Dkt. 67.) The stipulation did not change the due date for the initial expert reports; they remained due on August 1, 2018. (Dkts. 54, 56, 56-1, 67.)

On August 1, 2018, Plaintiffs served the expert report of Donald M. May, Ph.D. (Henry Decl., ¶ 41, Ex. KK (“May Report”).) Dr. May’s expert report is the same document that Plaintiffs submitted with their motion for class certification. (C.f. May Report and Dkt. 80-2.) [REDACTED]

[REDACTED] (May Report.) [REDACTED]

[REDACTED]. (*Id.*, ¶¶ 22, 31.) Two days before he served his report, and after the extended discovery cutoff, on July 30, 2018, Plaintiffs served a subpoena on third party consumer data company IRI Worldwide. (Henry Decl., ¶ 42, Ex. LL.) Though Younique requested copies of whatever IRI produced, Younique has not received any documents, and assumes none was produced. (*Id.*, ¶ 42.)

VI. STANDARD FOR SUMMARY JUDGMENT

The operative complaint frames the issues for a motion for summary judgment. *See e.g., Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 968-69 (9th Cir. 2006) (affirming finding that plaintiff's complaint did not give fair notice of new allegations); *Johnson v. Hewlett-Packard Co.*, 809 F.Supp.2d 1114, 1131-32 (N.D. Cal. 2011) (affirming grant of summary judgment against named class action plaintiffs; the court would not permit plaintiffs to take further discovery that was outside the scope of the operative complaint).

Summary judgment is appropriate when no genuine dispute as to any material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion, and of identifying those portions of the pleadings, depositions and declarations that demonstrate the absence of a

1 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
2 A fact is material if it might affect the outcome of the case. *Anderson v. Liberty*
3 *Lobby, Inc.*, 477 U.S. 242, 248 (1986).

4 On an issue where the opposing party will bear the burden of proof at trial,
5 the moving party can prevail merely by pointing out that the opposing party lacks
6 evidence to support its case. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984
7 (9th Cir. 2007). If the moving party meets its initial burden, the opposing party
8 must then set out “specific facts” showing a genuine issue for trial to defeat the
9 motion. *Id.* (quoting *Anderson*, 477 U.S. at 250). The opposing party's evidence
10 must be more than “merely colorable” and must be “significantly probative.”
11 *Anderson*, 477 U.S. at 249-50. Further, the opposing party may not rest upon mere
12 allegations or denials of the adverse party's evidence, but instead must produce
13 admissible evidence that shows a genuine issue of material fact exists for trial.
14 *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102-03 (9th
15 Cir. 2000).

16 In addition, if “the court does not grant all the relief requested by the motion,
17 it may enter an order stating any material fact – including an item of damages or
18 other relief – that is not genuinely in dispute and treating the fact as established in
19 the case.” Fed. R. Civ. P. 56(g).

20 One of the grounds for summary judgment here is that all four Plaintiffs lack
21 standing. To establish standing under Article III, the plaintiff must show: (1) injury
22 in fact; (2) causation; and (3) redressability. *Lujan v. Defenders of Wildlife*, 504
23 U.S. 555, 560-61 (1992). To establish an injury in fact, a plaintiff must demonstrate
24 the “invasion of a legally protected interest which is (a) concrete and particularized;
25 and (b) actual or imminent, not conjectural or hypothetical.” *Id.* at 560 (internal
26 cites omitted). “By particularized,” it is meant “that the injury must affect the
27 plaintiff in a personal and individual way.” *Id.* at 560 n.1.

28 “At the pleading stage, general factual allegations of injury resulting from the

1 defendant's conduct may suffice,” but “[i]n response to a summary judgment motion
2 [...]the plaintiff can no longer rest on such ‘mere allegations,’ but must ‘set forth’
3 by affidavit or other evidence ‘specific facts’” of injury in fact. *Lujan*, 504 U.S. at
4 561 (reversing courts below, finding summary judgment should have been granted
5 because the plaintiff lacked standing).

6 All of the Plaintiffs lack Article III standing, and their claims fail for other,
7 additional reasons discussed below.

8 **VII. PLAINTIFF REILLY’S CLAIM UNDER FLORIDA’S DECEPTIVE**
9 **AND UNFAIR TRADE PRACTICES ACT FAILS**

10 To establish a claim under the FDUTPA, there must be “(1) a deceptive act or
11 unfair practice; (2) causation; and (3) actual damages.” *Rollins, Inc. v. Butland*, 951
12 So.2d 860, 869 (Fla. Dist. Ct. App. 2006). Reilly must show “probable, not
13 possible, deception” that is “likely to cause injury to a reasonable relying
14 consumer.” *Zlotnick v. Premier Sales Group, Inc.*, 480 F.3d 1281, 1284 (11th Cir.
15 2007).

16 Reilly must also have actual damages to bring a claim under the FDUTPA.
17 *Baptist Hosp., Inc. v. Baker*, 84 So.3d 1200, 1204-05 (Fla. 1st DCA 2012) (ruling
18 plaintiff lacked standing because, in part, he had no issues with the services he was
19 provided and thus was not damaged). Damages are limited to the difference
20 between a product as represented versus as delivered. *Rollins*, 951 So.2d at 869.

21 Summary judgment is appropriate for three independent reasons.

22 First, Reilly does not have standing to bring this claim. [REDACTED]

23 [REDACTED] (SUF 1; Reilly
24 Tr., 67:12-18.) She has not suffered the injury that is the subject of the allegations
25 in the operative complaint. (SAC, ¶¶ 2, 8, 22, 36.)

26 Second, Reilly cannot prove the causation element of her FDUTPA claim.

27 [REDACTED]
28 [REDACTED]. (SUF 1; Reilly Tr., 67:12-18.) [REDACTED]

1 [REDACTED] (SUF 2; *Id.*, 149:2-11; *see also* 43:24-44:10.)

2 [REDACTED]

3 (SUF 3; *Id.*, 134:21-135:9.) [REDACTED]

4 [REDACTED] (SUF 4; *Id.*, 153:19-154:15.) Reilly's testimony
5 establishes that the alleged false labeling did not cause her the alleged injury, nor
6 was she damaged thereby.

7 Third, Reilly lacks evidence of damages recoverable under the FDUTPA.

8 [REDACTED]

9 [REDACTED] (SUF 4; Reilly Tr., 153:19-154:15.) [REDACTED]

10 [REDACTED]

11 [REDACTED] (SUF 3, 5; *Id.*, 27:15-29:1; 58:22-25; 134:21-135:9.) Her
12 admissions prove that she received the value of the Lash Enhancer and there are no
13 recoverable damages.

14 In addition, Reilly did not produce evidence of her damages. In response to
15 written discovery seeking documents that support her damages, she objected, stating
16 that she would "comply with [the rules and case management order] governing
17 disclosure of expert information." (SUF 6; Ex. FF; Response Nos. 9, 16, 17, 20, 21,
18 24-27.) [REDACTED]

19 [REDACTED]. (SUF 7; Ex. KK.) [REDACTED]

20 [REDACTED] (SUF 8; Ex. KK.) In response to Request No. 23, Reilly
21 produced one receipt showing the price she paid, but this is not evidence of her
22 damages. Reilly is only entitled to the difference between the value of the Lash
23 Enhancer as represented versus as received, and not a full refund. *Rollins*, 951
24 So.2d at 869.

25 Accordingly, summary judgment is appropriate.

26 **VIII. PLAINTIFF ORLOWSKY'S TENNESSEE CLAIMS FAIL**

27 **A. Orlofsky Lacks Standing To Bring Claims Under Tennessee Law**
28 **Because She Did Not Live There When She Bought The Lash**
Enhancer

1 A plaintiff must be injured in a state “in order to bring claims under that
2 state’s laws.” *United Food & Commer. Workers Local 1776 & Participating*
3 *Employers Health & Welfare Fund v. Teikoku Pharma USA, Inc.*, 74 F.Supp.3d
4 1052, 1078-79 (N.D. Cal. 2014) (citing nine other Ninth Circuit district court cases
5 finding same); *In re Capacitors Antitrust Litig.*, 154 F.Supp.3d 918, 927 (requiring
6 an “in-state injury in the form of an in-state purchase ... to satisfy Article III
7 standing for each of the state law claims asserted.”).

8 [REDACTED]
9 [REDACTED] (SUF 9.) She lacks standing to bring claims under Tennessee
10 law. Orlowsky’s claims are addressed below in the alternative.

11 **B. Orlowsky’s Warranty Claims Must Be Dismissed As She Failed to**
12 **Provide Pre-Suit Notice**

13 Pre-suit notice is a prerequisite to bringing express and implied warranty
14 claims under Tennessee law. Tenn. Code Ann. § 47-2-607(3)(a); *see Siriano v.*
15 *Goodman Mfg. Co., L.P.*, 2015 U.S. Dist. LEXIS 191458, *21-22 (S.D. Ohio Aug.
16 18, 2015) (dismissing Tennessee plaintiffs who had not given own notice of breach
17 of warranty); *Rysewyk v. Sears Holdings Corp.*, 2015 U.S. Dist. LEXIS 169124,
18 *12-13 (N.D. Ill. Dec. 18, 2015) (dismissing warranty claims for failure to give pre-
19 suit notice); *Preston v. Manchester*, 1990 Tenn. App. LEXIS 625, *33 (Aug. 31.
20 1990) (including requirement among elements required to state a claim under
21 implied warranty law).

22 [REDACTED] (SUF 10, 11.)
23 Plaintiffs may argue that a notice was provided before this litigation, but that letter
24 was sent on behalf of plaintiff Schmitt, who asserted claims under California law.
25 (Schmitt Tr., 89:14-90:9, Ex. E, PL0006-0008; Orlowsky Tr. 37:23-38:1.) Not until
26 after the lawsuit was filed did Orlowsky engage counsel; thus, her counsel’s earlier
27 letter could not have applied to Orlowsky. (Orlowsky Tr., 60:8-61:23.) Summary
28 judgment on her warranty claims should be granted.

1 **C. Orlowsky’s Claims Fail Because She Has Not Suffered Injury or**
2 **Damages as a Result of the Alleged Mislabeling**

3 Orlowsky’s express warranty claim depends on a showing that she “was, in
4 fact, induced” by the “natural” “green tea” language. *Smith v. TimberPro Inc.*, 2017
5 Tenn. App. LEXIS 163, *11-12 (Mar. 9, 2017) (affirming grant of summary
6 judgment on express warranty claim). Orlowsky must have relied on the “natural”
7 “green tea” language when deciding to purchase the Lash Enhancer. *Bearden v.*
8 *Honeywell Int’l, Inc.*, 2010 U.S. Dist. LEXIS 83996, *14 (M.D. Tenn. Aug. 16,
9 2010) (dismissing individual and class action claim for failure to show reliance prior
10 to purchase).

11 Orlowsky’s implied warranty claim requires that she prove, “(1) a merchant
12 sold goods, (2) which were not ‘merchantable’ at the time of sale, (3) injury and
13 damages to the plaintiff or his property (4) which were caused proximately and in
14 fact by the defective nature of the goods, and (5) notice to seller of injury.” *Preston*,
15 1990 Tenn. App. LEXIS at *33 (affirming grant of summary judgment).

16 Orlowsky’s TCPA claim requires that she show that Younique engaged in a
17 “deceptive act,” and that such conduct “caused an ascertainable loss of money” to
18 Orlowsky. Tenn. Code Ann. § 47-18-109; *ProductiveMD, LLC v. 4UMD, LLC*, 821
19 F.Supp.2d 955, 967 (M.D. Tenn. 2011) (citing statute).

20 Orlowsky’s damages are limited to the difference in the value of the Lash
21 Enhancer as warranted and as accepted. Tenn. C. § 47-2-714; *Audio Visual Artistry*
22 *v. Tanzer*, 403 S.W.3d 789, 809 (2012) (finding plaintiff did not carry this burden).

23 Summary judgment of Orlowsky’s claims is appropriate for three independent
24 reasons.

25 First, Orlowsky does not have standing to bring the claims that are alleged in
26 the SAC. [REDACTED]

27 (SUF 12; Orlowsky Tr., 131:9-25.) [REDACTED]
28 [REDACTED]. (SUF 13; *Id.*, 92:18-

1 93:5.) [REDACTED]
2 (SUF 14; *Id.*, 131:9-25.) [REDACTED]
3 [REDACTED]
4 [REDACTED] (SUF 15; *Id.*, 112:7-14.) She has not suffered
5 the injury that is the subject of the allegations in the operative complaint. (SAC, ¶ 2,
6 8, 22, 44.)

7 Second, Orlowsky lacks evidence that the label caused her any damage. [REDACTED]
8 [REDACTED] (SUF 12-14.) [REDACTED]
9 [REDACTED]. (SUF 15; *Id.*, 79:16-80:4.)
10 [REDACTED]
11 [REDACTED] (SUF 15; *Id.*, 112:7-14.) [REDACTED]
12 [REDACTED] (SUF 16; *Id.*, 31:12-32:7.) [REDACTED]
13 [REDACTED]
14 [REDACTED] (SUF 17; *Id.*, 195:3-7.)

15 Third, Orlowsky lacks evidence of damages recoverable under her claims.
16 [REDACTED]
17 [REDACTED] (SUF 18; *Id.*, 81:18-20.) Her
18 admissions prove that she received the value of the Lash Enhancer and there are no
19 recoverable damages.

20 In addition to her own admissions, she has no evidence of her damages. In
21 response to written discovery seeking documents that support her damages, she
22 objected, stating that she would “comply with [the rules and case management
23 order] governing disclosure of expert information.” (SUF 19; Ex. GG, Responses 9,
24 16, 17, 20, 21, 24-27.) [REDACTED]
25 [REDACTED] (SUF 20; Ex. KK.) [REDACTED]
26 [REDACTED] (SUF 8; *Id.*) Although Orlowsky
27 produced four receipts at her deposition, these cannot evidence her damages.
28 Orlowsky is only entitled to the difference between the value of the Lash Enhancer

1 as represented versus as received, and not a full refund. *Audio Visual, supra*, 403
2 S.W.3d at 809.

3 Accordingly, Orlowsky's claims fail for multiple reasons.

4 **IX. PLAINTIFF SCHMITT'S CALIFORNIA CLAIMS FAIL**

5 **A. Schmitt's Claims Require Standing, Causation and Damages**

6 1. **The UCL Requires Evidence of Standing, Causation and**
7 **Damage**

8 The UCL prohibits unfair competition, including "any unlawful, unfair or
9 fraudulent business act or practice and unfair, deceptive, untrue or misleading
10 advertising." Cal. Bus. & Prof Code § 17200. To establish a claim of false or
11 misleading advertising under California law, a plaintiff must establish that it is
12 "*probable* that a significant portion of the general consuming public or of targeted
13 consumers, acting reasonably in the circumstances, could be misled." *Lavie v.*
14 *Procter & Gamble Co.*, 105 Cal.App.4th 496, 508 (2003).

15 Only a "person who has suffered injury in fact and has lost money or property
16 as a result of" a UCL violation may bring an action for violation. Cal. Bus. & Prof.
17 Code §§ 17204. The phrase "as a result of" means "caused by" and "requires a
18 showing of a causal connection or reliance on the alleged misrepresentation," as
19 "reliance is the causal mechanism of fraud." *Kwikset Corp. v. Super. Ct.*, 51 Cal.4th
20 310, 326 (2011) (internal cites omitted).

21 Reliance is proved by showing that the defendant's misrepresentation or
22 nondisclosure was "an immediate cause" of the plaintiff's injury-producing conduct.
23 *In re Tobacco II Cases*, 46 Cal.4th 298, 326 (2009). A plaintiff may establish that
24 the defendant's misrepresentation is an "immediate cause" of the plaintiff's conduct
25 by showing that in its absence the plaintiff "in all reasonable probability" would not
26 have engaged in the injury-producing conduct. *Id.*

27 The monetary remedy under the UCL is the "difference between what the
28 plaintiff paid and the value of what the plaintiff received is a proper measure of

1 restitution.” *In re Vioxx Class Cases*, 180 Cal.App.4th 116, 130-31 (2009).

2 2. The Consumers Legal Remedies Act Requires Standing,
3 Causation and Damages

4 Schmitt asserts fraud-based claims under the CLRA, Cal. Civil Code § 1770.
5 She alleges that Younique violated CLRA sections (a)(5) (alleging that the Lash
6 Enhancer is represented as having characteristics that it does not have), (a)(7)
7 (alleging that the Lash Enhancer lacks a particular standard or quality that it is
8 represented to have), and (a)(9) alleging that Younique advertised the Lash
9 Enhancer with an intent not to see it as advertised). (Dkt. 58, SAC, ¶¶ 86-88.)

10 Consumers “seeking to recover damages under the CLRA based on a fraud
11 theory must prove actual reliance on the misrepresentation and harm.” *Sateriale v.*
12 *R.J. Reynolds Tobacco Co.*, 697 F.3d 777, 793-94 (9th Cir. 2012); *accord, Kwiskset*,
13 51 Cal.4th at 326-27. “Actual reliance” means that the “misrepresentation was an
14 immediate cause of the injury-producing conduct.” *Kwikset*, 51 Cal.4th at 326-27.
15 Damages are limited to “the price paid versus the value received.” *Chowning v.*
16 *Kohl's Dep't Stores, Inc.*, 2018 U.S. App. LEXIS 16336, *2-3 and n.1 (9th Cir. June
17 18, 2018) (affirming summary judgment because plaintiff did not provide evidence
18 of the “value received”).

19 3. The Express and Implied Warranty Claims Require a Showing of
20 Standing, Causation and Damages

21 In California, express warranties can be created when a seller makes
22 affirmations of fact or promises that become part of the basis of the bargain. Cal.
23 Comm. Code § 2313(1)(a), (b). Schmitt must prove that Younique, “(1) made an
24 affirmation of fact or promise or provided a description of its goods; (2) the promise
25 or description formed part of the basis of the bargain; (3) the express warranty was
26 breached; and (4) the breach caused injury to the plaintiff.” *Viggiano v. Hansen*
Natural Corp., 944 F.Supp.2d 877, 893 (C.D. Cal. 2013).

27 If the resulting bargain does not rest on the seller's representations, those
28 representations “cannot be considered as becoming any part of the basis of the

1 bargain.” *Sandoval v. Pharmacare US, Inc.*, 730 Fed.Appx. 417, 419 (9th Cir.
2 2018) (citing *Keith v. Buchanan*, 173 Cal.App.3d 13, 23 (1985)). In *Sandoval*, the
3 court affirmed the grant of summary judgment because the plaintiff testified that the
4 website in question had “no effect on his decision to purchase IntenseX, and Kanfer
5 failed to submit sufficient evidence that he viewed and relied on the website before
6 his first purchase of IntenseX.” *Id.*

7 Claims for breach of the implied warranty of merchantability require, “not
8 only the existence of the warranty but the fact that the warranty was broken and that
9 the breach of the warranty was the proximate cause of the loss sustained.” Cal.
10 Comm. Code § 2314 (comments); accord, *In re ConAgra Foods, Inc.*, 90 F.Supp.3d
11 919, 1007 (C.D. Cal. 2015). Damages are limited to the difference between the
12 good as represented versus as delivered. Cal. Comm. Code § 2714.

13 When an implied warranty claim is based solely on whether the product in
14 dispute conforms to its label, the claim rises and falls with express warranty claims
15 brought for the same product. *Hadley v. Kellogg Sales Co.*, 273 F.Supp.3d 1052,
16 1096 (N.D. Cal. Aug. 10, 2017) (citing *Hendricks v. StarKist Co.*, 30 F.Supp.3d
17 917, 933 (N.D. Cal. 2014)). Plaintiffs’ implied warranty claim under California law
18 is based only on the representations on the label. (Dkt. 58, SAC ¶ 106.)

19 **B. Schmitt Admitted Facts Showing She Lacks Standing and the**
20 **Alleged Misrepresentation Did Not Cause Her Harm, and Lacks**
21 **Evidence of Damages**

22 First, Schmitt lacks standing to bring her claims based on alleged mislabeling.

23 [REDACTED]. (SUF 21; Schmitt Tr., 41:2-44:8.)

24 (SUF 22; *Id.*, 32:19-33:13; 41:2-42:6.) [REDACTED]

25 [REDACTED]. (SUF 21; *Id.*, 32:19-33:13;
26 41:2-44:8.) [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED] (SUF 23; *Id.*, 47:2-48:1; *see also* 39:19-40:6; 102:18-104:2.) Therefore, she
2 has not suffered the mislabeling injury that is the subject of the allegations in the
3 operative complaint. (SAC, ¶ 2, 8, 22, 32.)

4 Second, [REDACTED]
5 [REDACTED] Schmitt has no evidence of causation; to wit, that the label caused her any
6 damage. (SUF 21-23.)

7 Third, Schmitt has no evidence of her damages. [REDACTED]
8 [REDACTED] (SUF 24; *Id.*, 129:5-130:1.)

9 [REDACTED]
10 [REDACTED] (SUF 25; *Id.*, 128:10-17.) [REDACTED]
11 [REDACTED]
12 [REDACTED] (SUF 26, 27; *Id.*, 52:10-22; 55:5-8.) In response to
13 written discovery seeking documents that support her damages, Schmitt objected,
14 stating that she would “comply with [the rules and case management order]
15 governing disclosure of expert information.” (SUF 28; Ex. II, Responses 9, 16, 17,
16 20, 21, 24-27.) [REDACTED]

17 [REDACTED] (SUF 29; Ex. KK.) [REDACTED]
18 [REDACTED]
19 (SUF 8; *Id.*)

20 Accordingly, Younique is entitled to summary judgment on Schmitt's claims
21 for multiple reasons.

22 **X. PLAINTIFF BRUN'S OHIO CLAIMS FAIL**

23 **A. Brun Lacks Standing To Bring a Claim Under the Ohio Deceptive**
24 **Trade Practices Act**

25 Relief under the ODTPA is not available to consumers. *In re Sony Gaming*
26 *Networks & Customer Data Sec. Breach Litig.*, 996 F.Supp.2d 942, 1006 (S.D. Cal.
27 2014) (granting motion to dismiss without leave to amend because plaintiff
28 consumers lacked standing) (citing *In re Oreck Corp. Halo Vacuum & Air Purifiers*

1 *Mktg. & Sales Practices Litig.*, 2012 U.S. Dist. LEXIS 172869, *32-33 (C.D. Cal.
2 Dec. 3, 2012) (dismissing claim). The ODTPA's purpose "is exclusively to protect
3 the interests of a purely commercial class against unscrupulous commercial
4 conduct." *Michelson v. Volkswagen Aktiengesellschaft*, 2018-Ohio-1303, *16 (Ct.
5 App. 2018). "[I]f consumers had standing to sue under the DTPA, the CSPA would
6 be rendered superfluous because both prohibit the same type of conduct."
7 *Blankenship v. CFMOTO Powersports, Inc.*, 161 Ohio Misc. 2d 5, *17 (2011).
8 Brun lacks standing as a matter of law to pursue relief under the ODTPA.

9 **B. Brun's Ohio Consumer Sales Practices Act Is Time-Barred**

10 The OCSA has a two-year statute of limitations, and the discovery rule does
11 not apply. Ohio Rev. Code § 1345.10(C); *Rosenow v. Shutrump & Assocs.*, 163
12 Ohio App. 3d 500, 504-05 (2005) (affirming summary judgment on statute of
13 limitations grounds).

14 Brun's OSCPA claim is time-barred. Younique stopped selling the Lash
15 Enhancer more than 2 years before this lawsuit was filed. (SUF 30, 31; Dkt. 80-1
16 (Mot. Class Cert.), 8:25-9:3 (acknowledging same); Dkt. 58, SAC, ¶ 4.) Brun's
17 evidence of purchases show they all occurred more than 2 years before the original
18 complaint was filed. (SUF 32; Ex. E (PL00002) and Exs. F, J-P.) The statute has
19 now run. This claim is addressed in the alternative below.

20 **C. Brun's Warranty Claims Fail Because She Lacks Damages Caused**
21 **By the Alleged Breach**

22 Brun's express warranty claim requires her to show that, "(1) a warranty
23 existed; (2) the product failed to perform as warranted; (3) plaintiff provided the
24 defendant with reasonable notice of the defect; and (4) plaintiff suffered injury as a
25 result of the defect." *Caterpillar Fin. Servs. Corp. v. Harold Tatman & Son's,*
26 *Enters.*, 2015-Ohio-4884, 11 (Ct. App. 2015). Representations may become a
27 warranty if they are "the basis for the bargain." O.R.C. Ann. § 1302.26; *Bobb*
28 *Forest Prods. v. Morbark Indus.*, 151 Ohio App. 3d 63, 81 (Ct. App. 2002).

1 For the implied warranty claim, Brun must, “show not only the existence of
2 the warranty but the fact that the warranty was broken and that the breach of the
3 warranty was the proximate cause of the loss sustained.” *Taylor v. Boardman Twp.*
4 *Local Sch. Dist. Bd. of Educ.*, 2009-Ohio-6528, *25 (Ct. App. 2009) (granting
5 summary judgment because plaintiff did not show how the breach of warranty
6 proximately caused her damage).

7 As to her alleged damages, she must establish the difference between the
8 value of the Lash Enhancer as warranted and as accepted. O.R.C. Ann. § 1302.88;
9 *Pickens v. Phillips*, 1998 Ohio App. LEXIS 974, *4 (Ct. App. 1998) (finding
10 plaintiff not entitled to damages because she did not present evidence of the
11 difference in value).

12 First, Brun lacks evidence that the alleged breach of warranty caused her
13 harm. [REDACTED]
14 (SUF 33; Ex. D, Brun Tr., 91:5-18; 166:24-167:6.) [REDACTED]
15 [REDACTED] SUF 34; *Id.*, 158:14-161:3; 234:4-
16 20; 279:21-280:8.) [REDACTED]
17 [REDACTED] (SUF 35; *Id.*, 308:13-
18 309:1.) Accordingly, she has no evidence that he was damaged as a result of the
19 alleged false label.

20 Second, Brun also lacks evidence of damages recoverable under her claims.
21 [REDACTED]
22 [REDACTED] (SUF 36; Brun
23 Tr., 50:7-16.) In response to written discovery seeking documents that support her
24 damages, she objected, stating that she would “comply with [the rules and case
25 management order] governing disclosure of expert information.” (SUF 37; Ex. JJ,
26 Responses 9, 16, 17, 20, 21, 24-27.) [REDACTED]
27 [REDACTED] (SUF 38; Ex. KK.) [REDACTED]
28 [REDACTED]

1 [REDACTED]. (SUF 8; *Id.*) Although Brun produced some receipts, these
2 cannot evidence her damages. Brun is only entitled to the difference between the
3 value of the Lash Enhancer as represented versus as received, and not a full refund.
4 *Pickens, supra*, 1998 Ohio App. LEXIS 974, *4.

5 Accordingly, Younique is entitled to summary judgment on Brun's claims for
6 multiple reasons.⁴

7 **XI. PLAINTIFFS' MMWA FAILS**

8 "[C]laims under the Magnuson-Moss Act stand or fall with [] express and
9 implied warranty claims under state law." *Clemens v. DaimlerChrysler Corp.*, 534
10 F.3d 1017, 1022 (9th Cir. 2008). Damages are also determined by "look[ing] to
11 applicable state law." *Tuscany Invs. LLC v. Daimler Trucks North Am. LLC*, 2015
12 U.S. Dist. LEXIS 109842, *5 (N.D. Cal. Aug. 19, 2015). Plaintiffs alleged a breach
13 of implied warranties under the MMWA. (Dkt. 58, SAC, p.16; *see also* Dkt. 53
14 Order on MTD, p. 5-6 ("Plaintiffs concede that their MMWA claims with respect to
15 the state law express warranties should be dismissed.")) As shown herein,
16 Plaintiffs' warranty claims lack merit and Plaintiffs lack standing on these claims.
17 Therefore, as a matter of law, Plaintiffs' MMWA claim is subject to summary
18 judgment. (SUF 10-29; 33-38.)

19 **XII. PLAINTIFFS CANNOT SEEK EQUITABLE RELIEF**

20 "[I]t is axiomatic that a court *should* determine the adequacy of a remedy in
21 law before resorting to equitable relief." *Franklin v. Gwinnett Cty. Pub. Sch.*, 503
22 U.S. 60, 75-76 (1992); accord *Mort v. United States*, 86 F.3d 890, 892 (9th Cir.
23 1996). Consequently "a plaintiff seeking equitable relief in California must establish
24 that there is no adequate remedy at law available." *Munning v. Gap, Inc.*, 238

25 _____
26 ⁴ For the same reason, her OCSA claim fails, in addition to being time barred. For
27 the OCSA, Brun must show, "a nexus between defendant's conduct and [her]
28 injury," and show she was aware of the label "before or during the purchase." *Farris*
v. ADT, LLC, 2017 U.S. Dist. LEXIS 161003, *10-11 (N.D. Ohio Sept. 29, 2017).
Brun, "must prove damages were a proximate result" of the product label. *Butler v.*
Sterling, Inc., 2000 U.S. App. LEXIS 6419, *13-14 (6th Cir. Mar. 31, 2000).

1 F.Supp.3d 1195, 1203 (N.D. Cal. 2017) (internal citations omitted).

2 Plaintiffs seek money damages and have not articulated any reason why their
3 remedies at law would not be adequate were they to prevail. (SUF 39.) Summary
4 judgment should be granted as to the equitable claims.

5 **XIII. CONCLUSION**

6 For all of the foregoing reasons, the court should grant summary judgment in
7 favor of Younique and enter a judgment in Younique's favor. In the alternative, the
8 court should grant summary adjudication on all meritorious grounds.

9
10 Dated: September 17, 2018

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12
13 By

/s/ Abby Meyer

SASCHA HENRY

JONATHAN D. MOSS

ABBY H. MEYER

Attorneys for Defendant Younique, LLC

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